

REFERENCE TITLE: home detention; DUI; ineligibility

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1005

Introduced by
Senator Waring

AN ACT

AMENDING SECTIONS 5-395.01, 9-499.07 AND 11-459, ARIZONA REVISED STATUTES;
RELATING TO HOME DETENTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.01, Arizona Revised Statutes, is amended to
3 read:

4 5-395.01. Operating or in actual physical control of a
5 motorized watercraft while intoxicated:
6 classification: penalties

7 A. A person who is convicted of a violation of section 5-395 is guilty
8 of a class 1 misdemeanor. The person shall pay a fine of not less than two
9 hundred fifty dollars. In addition to any other penalties under this
10 section, the judge shall order the person to complete alcohol or other drug
11 screening that is provided by a facility approved by the department of health
12 services or a probation department. If a judge determines that the person
13 requires further alcohol or other drug education or treatment, the person may
14 be required pursuant to court order to obtain alcohol or other drug education
15 or treatment under the court's supervision from an approved facility. The
16 judge may review an education or treatment determination at the request of
17 the state or the defendant or on the judge's initiative. The person shall
18 pay the costs of the screening, education or treatment unless the court
19 waives part or all of the costs.

20 B. Except as provided in section 5-398.01, the court may suspend any
21 imposed sentence for a first violation of section 5-395 if the person
22 completes a court ordered alcohol or other drug screening, education or
23 treatment program. If the person fails to complete the court ordered alcohol
24 or other drug screening, education or treatment program and has not been
25 placed on probation, the court shall issue an order to show cause to the
26 defendant as to why the remaining jail sentence should not be served.

27 C. A court may order a person sentenced pursuant to this section to
28 perform community restitution.

29 D. Notwithstanding subsection B of this section, if within a period of
30 sixty months a person is convicted of a second violation of section 5-395 or
31 is convicted of a violation of section 5-395 and has previously been
32 convicted of an act in another state that if committed in this state would be
33 a violation of section 5-395, the person shall be sentenced to serve not less
34 than ninety days in jail, thirty days of which shall be served consecutively,
35 and the person is not eligible for probation or suspension of execution of
36 sentence unless the entire sentence has been served, except that the judge
37 may suspend at the time of sentencing all but thirty days of the sentence if
38 the person completes a court ordered alcohol or other drug screening,
39 education or treatment program. If the person fails to complete the court
40 ordered alcohol or other drug screening, education or treatment program and
41 has not been placed on probation, the court shall issue an order to show
42 cause as to why the remaining jail sentence should not be served. The judge
43 shall order the person to pay a fine of not less than five hundred dollars.

44 E. The dates of the commission of the offense are the determining
45 factor in applying the sixty month provision of subsection D of this section,

1 irrespective of the sequence in which the offenses were committed. A second
2 violation for which a conviction occurs as provided in this section shall not
3 include a conviction for an offense arising out of the same series of acts.

4 F. If a person is referred to a screening or treatment facility, that
5 facility shall report to the court whether the person has successfully
6 completed the screening, education or treatment program.

7 G. Any political subdivision processing or utilizing the services of a
8 person ordered to perform community restitution pursuant to this section does
9 not incur any civil liability to the person ordered to perform community
10 restitution as a result of these activities unless the political subdivision
11 or its agent or employee acts with gross negligence.

12 H. After a person who is sentenced pursuant to subsection B of this
13 section has served twenty-four consecutive hours in jail or after a person
14 who is sentenced pursuant to subsection D of this section has served
15 forty-eight consecutive hours in jail and after receiving confirmation that
16 the person is employed or is a student, the court, on pronouncement of any
17 jail sentence under this section, may provide in the sentence that the person
18 may be permitted, if the person is employed or is a student and can continue
19 the person's employment or studies, to continue such employment or studies
20 for not more than twelve hours per day nor more than five days per week, and
21 the remaining day, days or parts of days shall be spent in jail until the
22 sentence is served. The person shall be allowed out of jail only long enough
23 to complete the actual hours of employment or studies and no longer.

24 ~~I. A person who is sentenced pursuant to this section is eligible for~~
25 ~~a home detention program pursuant to the provisions of section 9 499.07,~~
26 ~~subsections M through R or section 11 459, subsections L through Q.~~

27 ~~J.~~ I. The court shall allow the allegation of a prior conviction or
28 other pending charge of a violation of section 5-395 filed twenty or more
29 days before the date the case is actually tried and may allow the allegation
30 of a prior conviction or other pending charge of a violation of section 5-395
31 filed any time before the date the case is actually tried, provided that when
32 the allegation is filed this state must make available to the defendant a
33 copy of any information obtained concerning the prior conviction or other
34 pending charge. Any conviction may be used to enhance another conviction
35 irrespective of the dates on which the offenses occurred within the sixty
36 month provision.

37 ~~K.~~ J. If a person is placed on probation for violating section 5-395,
38 the probation shall be supervised unless the court finds that supervised
39 probation is not necessary or the court does not have supervisory probation
40 services.

41 ~~L.~~ K. Persons who are convicted pursuant to section 5-395 shall pay
42 an additional assessment of five hundred dollars or, if the person is
43 convicted of a second violation pursuant to subsection D of this section,
44 shall pay an additional assessment of one thousand two hundred fifty dollars
45 to be deposited by the state treasurer in the prison construction and

1 operations fund established by section 41-1651. These assessments are not
2 subject to any surcharge. If the conviction occurred in the superior court
3 or a justice court, the court shall transmit the assessed monies to the
4 county treasurer. If the conviction occurred in a municipal court, the court
5 shall transmit the assessed monies to the city treasurer. The city or county
6 treasurer shall transmit the monies received to the state treasurer.

7 ~~M.~~ L. Persons convicted pursuant to section 5-395 shall pay an
8 additional assessment of five hundred dollars or for a second violation
9 pursuant to subsection D of this section shall pay an additional assessment
10 of one thousand two hundred fifty dollars to be deposited by the state
11 treasurer in the state general fund. These assessments are not subject to
12 any surcharge. If the conviction occurred in the superior court or a justice
13 court, the court shall transmit the assessed monies to the county treasurer.
14 If the conviction occurred in a municipal court, the court shall transmit the
15 assessed monies to the city treasurer. The city or county treasurer shall
16 transmit the monies received to the state treasurer.

17 Sec. 2. Section 9-499.07, Arizona Revised Statutes, is amended to
18 read:

19 9-499.07. Prisoner work, community restitution work and home
20 detention program; eligibility; monitoring;
21 procedures; community restitution work committee

22 A. A city or town may establish a prisoner work, community restitution
23 work and home detention program for eligible sentenced prisoners, which shall
24 be treated the same as confinement in jail. The presiding judge of the city
25 or town municipal court shall approve the program before its implementation.

26 B. A prisoner is not eligible for a prisoner work, community
27 restitution work and home detention program if any of the following applies:

28 1. The prisoner is found by the city or town to constitute a risk to
29 either himself or other members of the community.

30 2. The prisoner has a past history of violent behavior.

31 3. The sentencing judge states at the time of the sentence that the
32 prisoner may not be eligible for a prisoner work, community restitution work
33 and home detention program.

34 C. A PERSON WHO IS SENTENCED PURSUANT TO SECTION 5-395.01, 28-1381,
35 28-1382 OR 28-1383 SHALL NOT BE PLACED UNDER HOME DETENTION IN A PRISONER
36 WORK, COMMUNITY RESTITUTION WORK AND HOME DETENTION PROGRAM.

37 ~~C.~~ D. For prisoners who are selected for the program, the city or
38 town may require electronic monitoring in the prisoner's home whenever the
39 prisoner is not at the prisoner's regular place of employment or while the
40 prisoner is assigned to a community work task. If electronic monitoring is
41 required, the prisoner shall remain under the control of a home detention
42 device that constantly monitors the prisoner's location in order to determine
43 that the prisoner has not left the prisoner's premises. In all other cases,
44 the city or town shall implement a system of monitoring using telephone
45 contact or other appropriate methods to assure compliance with the home

1 detention requirements. The city or town may place appropriate restrictions
2 on prisoners in the program, including testing prisoners for consumption of
3 alcoholic beverages or drugs or prohibiting association with individuals who
4 are determined to be detrimental to the prisoner's successful participation
5 in the program.

6 ~~D.~~ E. If a prisoner is placed on electronic monitoring pursuant to
7 subsection ~~E.~~ D of this section, the prisoner shall pay an electronic
8 monitoring fee in an amount ranging from zero to full cost and thirty dollars
9 per month while on electronic monitoring, unless, after determining the
10 inability of the prisoner to pay these fees, the city or town assesses a
11 lesser fee. The fees collected shall be used by the city or town to offset
12 operational costs of the program.

13 ~~E.~~ F. Prisoners who are selected for the home detention program shall
14 be employed within the county in which the city or town is located. The city
15 or town shall review the place of employment to determine whether it is
16 appropriate for a home detention prisoner. If the prisoner is terminated
17 from employment or does not come to work, the employer shall notify the city
18 or town. Alternatively, or in addition, a community restitution work
19 assignment may be made by the city or town to a program recommended by the
20 community restitution work committee. If a prisoner is incapable of
21 performing community restitution or being employed, the city or town may
22 exempt the prisoner from these programs.

23 ~~F.~~ G. The city or town may require that a prisoner who is employed
24 during the week also participate in community restitution work programs on
25 weekends.

26 ~~G.~~ H. The city or town may allow prisoners to be away from home
27 detention for special purposes, including church attendance, medical
28 appointments or funerals.

29 ~~H.~~ I. Community restitution work shall include public works projects
30 operated and supervised by the city or town or other public agencies of this
31 state or projects sponsored and supervised by public or private community
32 oriented organizations and agencies.

33 ~~I.~~ J. A city or town implementing a program under this section shall
34 appoint a community restitution work committee. The committee shall
35 recommend to the city or town appropriate community restitution work projects
36 for home detention prisoners. Members are not eligible to receive
37 compensation.

38 ~~J.~~ K. At any time the city or town may terminate a prisoner's
39 participation in the prisoner work, community restitution work and home
40 detention program and require that the prisoner complete the remaining term
41 of the prisoner's sentence in jail confinement.

42 ~~K.~~ L. Nothing in this section shall prohibit a city or town from
43 entering into a joint exercise of powers agreement pursuant to section 11-952
44 for a prisoner work, community restitution work and home detention program.

~~L. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention in a prisoner work, community restitution work and home detention program except as provided in subsections M through R of this section.~~

~~M. By a majority vote of the full membership of the governing body of the municipality after a public hearing and a finding of necessity, a city or town may establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The city or town shall use the collected monies to offset operational costs of the program.~~

~~N. If the city or town establishes a home detention program under subsection M of this section, a prisoner must meet the following eligibility requirements for the program:~~

~~1. Subsection B of this section applies in determining eligibility for the program.~~

~~2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of twenty-four consecutive hours in jail.~~

~~3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or F, the prisoner first serves a minimum of fifteen consecutive days in jail before being placed under home detention.~~

~~4. The prisoner is required to comply with all of the following provisions for the duration of the prisoner's participation in the home detention program:~~

~~(a) All of the provisions of subsections C through H of this section.~~

~~(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.~~

~~(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.~~

~~(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.~~

~~(e) All other provisions of the sentence imposed.~~

~~5. Any additional eligibility criteria that the city or town may impose.~~

~~O. If a city or town establishes a home detention program under subsection M of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device~~

~~shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection N, paragraph 2 of this section.~~

~~P.~~ M. The court shall terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if:-

~~1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection N, paragraph 4, subdivision (c) of this section or section 28-1381, subsection J or L or violates an order pursuant to section 28-1382, subsection E or G.~~

~~2.~~ the court finds that the prisoner left the premises without permission of the court or supervising authority during a time the prisoner is ordered to be on the premises.

~~Q.~~ N. At any other time the court may terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

~~R. The governing body of the city or town may terminate the program established under subsection M of this section by a majority vote of the full membership of the governing body.~~

Sec. 3. Section 11-459, Arizona Revised Statutes, is amended to read:

11-459. Prisoner work, community restitution work and home detention program; eligibility; monitoring; procedures; community restitution work committee; members; duties

A. The sheriff may establish a prisoner work, community restitution work and home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail and shall fulfill the sheriff's duty to take charge of and keep the county jail and prisoners.

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program if any of the following applies:

1. After independent review and determination of the jail's classification program, the prisoner is found by the sheriff to constitute a risk to either himself or other members of the community.

2. The prisoner has a past history of violent behavior.

3. The prisoner has been convicted of a serious offense as defined in section 13-604 or has been determined to be a dangerous and repetitive offender.

4. Jail time is being served as a result of a felony conviction.

5. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program.

6. The prisoner is sentenced to a county jail and is being held for another jurisdiction.

1 ~~R.~~ C. A person who is sentenced pursuant to section 5-395.01,
2 28-1381, 28-1382 OR 28-1383 shall not be placed under home detention in a
3 prisoner work, community restitution work and home detention program.

4 ~~G.~~ D. For prisoners who are selected for the program, the sheriff may
5 require electronic monitoring in the prisoner's home whenever the prisoner is
6 not at the prisoner's regular place of employment or while the prisoner is
7 assigned to a community work task. If electronic monitoring is required, the
8 prisoner shall remain under the control of a home detention device that
9 constantly monitors the prisoner's location in order to determine that the
10 prisoner has not left the prisoner's premises. In all other cases, the
11 sheriff shall implement a system of monitoring using visitation, telephone
12 contact or other appropriate methods to assure compliance with the home
13 detention requirements. The sheriff may place appropriate restrictions on
14 prisoners in the program, including testing prisoners for consumption of
15 alcoholic beverages or drugs or prohibiting association with individuals who
16 are determined to be detrimental to the prisoner's successful participation
17 in the program.

18 ~~D.~~ E. If a prisoner is placed on electronic monitoring pursuant to
19 subsection ~~G.~~ D of this section, the prisoner shall pay an electronic
20 monitoring fee in an amount ranging from zero to full cost and thirty dollars
21 per month while on electronic monitoring, unless, after determining the
22 inability of the prisoner to pay these fees, the sheriff assesses a lesser
23 fee. The fees collected shall be used by the sheriff to offset operational
24 costs of the program.

25 ~~E.~~ F. Prisoners who are selected for the home detention program shall
26 be employed in the county in which they are incarcerated. The sheriff shall
27 review the place of employment to determine whether it is appropriate for a
28 home detention prisoner. If the prisoner is terminated from employment or
29 does not come to work, the employer shall notify the sheriff's office.
30 Alternatively, or in addition, a community restitution work assignment may be
31 made by the sheriff to a program recommended to the sheriff by the community
32 restitution work committee. If a prisoner is incapable of performing
33 community restitution or being employed, the sheriff may exempt the prisoner
34 from these programs.

35 ~~F.~~ G. The sheriff may require that a prisoner who is employed during
36 the week also participate in community restitution work programs on weekends.

37 ~~G.~~ H. The sheriff may allow prisoners to be away from home detention
38 for special purposes, including church attendance, medical appointments or
39 funerals. The standard for review and determination of such leave is the
40 same as that implemented to decide transportation requests for similar
41 purposes made by prisoners confined in the county jail.

42 ~~H.~~ I. Community restitution work shall include public works projects
43 operated and supervised by public agencies of this state or counties, cities
44 or towns on recommendation of the community restitution work committee and
45 approval of the sheriff. The community restitution work committee may also

1 recommend and the sheriff may approve other forms of community restitution
2 work sponsored and supervised by public or private community oriented
3 organizations and agencies.

4 ~~I.~~ J. The community restitution work committee is established in each
5 county and is composed of two designees of the sheriff, a representative of
6 the county attorney's office selected by the county attorney, a
7 representative of a local police agency selected by the police chief of the
8 largest city in the county and three persons selected by the county board of
9 supervisors from the private sector. A sheriff's designee shall serve as
10 committee chairman and schedule all meetings. The committee shall meet as
11 often as necessary, but no less than once every three months, for the purpose
12 of considering and recommending appropriate community restitution work
13 projects for home detention prisoners. The committee shall make its
14 recommendations to the sheriff. Members are not eligible to receive
15 compensation.

16 ~~J.~~ K. At any time the sheriff may terminate a prisoner's
17 participation in the prisoner work, community restitution work and home
18 detention program and require that the prisoner complete the remaining term
19 of the prisoner's sentence in jail confinement.

20 ~~K. If authorized by the court, a person who is sentenced pursuant to~~
21 ~~section 28-1381 or 28-1382 shall not be placed under home detention in a~~
22 ~~prisoner work, community restitution work and home detention program except~~
23 ~~as provided in subsections L through Q of this section.~~

24 ~~L. By a majority vote of the full membership of the board of~~
25 ~~supervisors after a public hearing and a finding of necessity a county may~~
26 ~~authorize the sheriff to establish a home detention program for persons who~~
27 ~~are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If~~
28 ~~the board authorized the establishment of a home detention program, a county~~
29 ~~sheriff may establish the program. A prisoner who is placed under the~~
30 ~~program established pursuant to this subsection shall bear the cost of all~~
31 ~~testing, monitoring and enrollment in alcohol or substance abuse programs~~
32 ~~unless, after determining the inability of the prisoner to pay the cost, the~~
33 ~~court assesses a lesser amount. The county shall use the collected monies to~~
34 ~~offset operational costs of the program.~~

35 ~~M. If a county sheriff establishes a home detention program under~~
36 ~~subsection L of this section, a prisoner must meet the following eligibility~~
37 ~~requirements for the program:~~

38 ~~1. Subsection B of this section applies in determining eligibility~~
39 ~~for the program.~~

40 ~~2. If the prisoner is sentenced under section 28-1381, subsection I,~~
41 ~~the prisoner first serves a minimum of twenty-four consecutive hours in jail.~~

42 ~~3. Notwithstanding section 28-1387, subsection C, if the prisoner is~~
43 ~~sentenced under section 28-1381, subsection K or section 28-1382, subsection~~
44 ~~D or F, the prisoner first serves a minimum of fifteen consecutive days in~~
45 ~~jail before being placed under home detention.~~

~~4. The prisoner is required to comply with all of the following requirements for the duration of the prisoner's participation in the home detention program:~~

~~(a) All of the provisions of subsections C through H of this section.~~

~~(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.~~

~~(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.~~

~~(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.~~

~~(e) All other provisions of the sentence imposed.~~

~~5. Any additional eligibility criteria that the county may impose.~~

~~N. If a county sheriff establishes a home detention program under subsection L of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection M, paragraph 2 of this section.~~

~~O. L. The court shall terminate a prisoner's participation in the home detention program and shall require the prisoner to complete the remaining term of the jail sentence by jail confinement if either:~~

~~1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection M, paragraph 4, subdivision (c) of this section or section 28-1381, subsection J or L or violates an order pursuant to section 28-1382, subsection E or G.~~

~~2. the prisoner leaves the premises during a time that the prisoner is ordered to be on the premises without permission of the court or supervising authority.~~

~~P. M. At any other time the court may terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.~~

~~Q. N. The sheriff may terminate the program at any time.~~